24697

The Under Secretary of Energy
Washington, DC 20585

AUG 07 2001

Mr. Charles Findley
Acting Administrator
EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101

Dear Mr. Findley:

The State of Idaho, the Environmental Protection Agency (EPA), and the Department of Energy (DOE) are involved in a dispute over DOE's request to extend the schedule for implementation of waste retrieval in Pit 9 of the Subsurface Disposal Area at the Idaho National Engineering and Environmental Laboratory. Attached is a letter that DOE sent to the Idaho Department of Environmental Quality (DEQ) after a conversation between Jessie Roberson of DOE and Stephen Allred of DEQ. We recognize that DOE's proposal requires the approval of both EPA and DEQ under the Federal Facility Agreement/Consent Order in order to implement it and are requesting your consideration of the request we have made to extend the negotiations at the current level until October 12 (60 days). We apologize for the inadvertent delay in forwarding DOE's proposal to you.

If you agree with this proposal, please contact Ms. Roberson in the next few days. She will name the Department's new member of the negotiating team and work with you to reach a consensus on the date of the team's next meeting. We would need the approval of both EPA and DEQ by August 13 in order to avoid the need to elevate the dispute. If you have any questions regarding DOE's proposal, please contact me or Jessie Roberson.

Sincerely,

Robert G. Card

Attachment

cc/w att:
Stephen Allred, Idaho DEQ

OU 7-10 Staged Interim Action Project (Pit 9)

- Agency recognition and acceptance of extended implementation schedule (design completion, procurement, construction and operation) for the follow-on Pit 9 project.

    - (June – August 2000) The EPA Program Manager (Wayne Pierre) several times acknowledged that he had no major argument with the 6 ½ year implementation schedule for Stage II. His position was we could negotiate back and forth and perhaps shave 1-2 years from the schedule, however completion and release of the Remedial Action Report would still be well beyond the April 2003 milestone.

    - (August 16, 2000) EPA (Wayne Pierre) noted in response to DEQ concern that the OU 7-13/14 RI/FS schedule was being held, despite obvious delays in the OU 7-10 project – "The [Regulatory] Agencies don't have the authority to require the PRP to extend an enforceable schedule. If [the PRP] needs post-ROD data, then they need to work it out. OU 7-10 is in trouble ('they're in a hole and not able to get out of it') – haven't heard that OU 7-13/14 is in that position."

    - (June – September 2000) Neither the DEQ nor EPA had any recommendations of note on the proposed Stage II schedule included with the Stage II Remedial Design/Remedial Action Work Plan submitted (Binder 24) to the agencies ahead of the June 30, 2000 milestone. No recommendations were provided by the Agencies for compressing the proposed 6-½ year schedule – other than fast-tracking long lead procurement. The DEQ (Dean Nygard) did note at least verbally, that he couldn't accept a schedule, which didn't meet the Settlement Agreement and Interim Action ROD. This was stated during a weekly project telephone conference, almost as a matter of administrative protocol. The context was – I really can't take any other position – almost apologetically! See also *WAG 7 October 2-5 DOE-ID/Agency Meeting* – IDEQ and EPA comments – "Resolve Stage II schedule with respect to enforceable milestones" – a further (expanded upon from Stage II RD/RA Work Plan, Binder 24 assumptions) basis and assumption package was compiled for the Agencies supporting the extended Stage II schedule.

    - The Agencies agreed to place further development of the Stage I, Phase II coring on hold in April 2000 "Agreements in Principle". Ref: Weekly meeting minutes of 7/13/00 restating this Agency position.

    - (July 6, 2000) The EPA (Wayne Pierre and consultants) had "no significant comments" on the Stage II RD/RA Work Plan, including the proposed implementation schedule duration of 6 ½ years from June 30, 2000 for the RA Report – other than it didn't meet the compliance schedule.

    - (June 26, 2000) The EPA stated the we must have schedule milestones which we all understand and agree are achievable (including underlying assumptions). EPA reiterated that this first of a kind project can not be "fully predictive" and under CERCLA "we will only go where the dates take us". Although both Agencies thereupon stated that they would jointly identify opportunities to build a schedule – there was little follow-through on this matter.

- (June 15, 2000) Weekly meeting notes – "EPA stated a desire for understanding how Stage II long lead procurement issues previously noted related to new integration schedule between OU 7-10 and OU 7-13/14 (e.g. ROCS, RES, Piling costs vs. risks given proposed Stage II go-ahead decision date). Edgerton responded that DOE-ID has significant concern about advance procurement actions being initiated in advance of a final, accepted design. IDHW noted that this is a critical element in the development of revised schedules. Per DOE-ID/Edgerton, long lead procurement needs of State II will be addressed in the revised, integrated OU 7-10 and OU 7-13/14 project schedules."

- Use of the Decision Criterion Plus software to make a decision on the project resulted in a very slow process for decision-making. The process required the Project to select evaluation criteria and submit them for approval by DOE-ID and the Agencies. Then a trade study was performed. The options from the trade study were then evaluated with various weighting factors. The result was finally checked for sensitivity and the decision documented. This formal process would typically take one to two months to complete.

  Note that the first time this formal decision process was used was to select the location fore the 40' by 40' target area. It was not until December 1997 that information was available to draft the Stage I work Plan due by March 1998.

- Agency contribution to expanded functional requirements (e.g. more extensive data gathering, increased design complexity, etc.) for the follow-on Pit 9 project.

  - The first activity that significantly impacted the design was the development of the process flow sheets. This effort was initiated at the fall meeting in Seattle and was not completed until August 1999. The level of information needed to meet the requirements precluded a typical retrieval process (excavate and package) and shifted the design to a slower and more refined retrieval (i.e. "archeological dig". Specifically the overburden and interstitial soil was to be vacuumed up following a process to break up the soil to allow vacuuming. Emphasis was placed on obtaining information on the halo soils around a degraded waste container by in situ sampling at the dig face.

  - (March – October 2000) The EPA/consultants repeatedly pushed for more extensive nondestructive examination and field measurements of the Stage II excavation to more precisely ascertain soil/waste volumes against the arbitrary 10 nCi/g limit. The DEQ also supported more extensive NDE and digface configurations to assure differentiation of materials above the 10 nCi/g threshold. Attempts to go back to an "average" TRU concentration (10 nCi/g) or consideration of this threshold only as a "goal" if practicable as discussed in the Pit 9 ROD were promptly dismissed by the Agencies during at least one weekly project call. NOTE: These Agency themes resulted in at least two engineering trade studies – (1) Soil Assay, and (2) TRU NDE Trade Study. Reference Weekly meeting minutes of 9/21/00 wherein the Agency push for more trade

studies would impact the project schedule. See also Weekly meeting minutes of May 18, 2000, p. 3).

- The agencies pressed continually for higher levels of characterization and sample representativeness. For instance, samples from soil collected into a drum were expanded from a spoon sample to a full depth core sample and were still not approved by the agencies as sufficient.

- (1999-2000) The Agencies were very much engaged in the evolution of the Stage II excavation profiling using 2'x2'x6" dig sections. This was particularly pushed by the EPA with an interest to more definitively differentiate waste materials, so-called "halo soil" and clean interstitial soil. The impact of the comment was significant. Specifically, the retrieval equipment became electronically controlled to better integrate with the coordinate system. This precluded using a very basic hydraulically controlled excavator arm. Additionally, with the amount of data now being recorded, the Data Acquisition and Management System (DAMS) became a major software development effort. All data was to be collected against a "XYZ" coordinate system that could be made into a detailed subsurface map.

- Hg monitoring issue: Monitoring and filtering of mercury was unwarranted from the technical analysis based on the inventory but was required by the Agencies.

- Exhaust Stack: reflects a Stage II comment from the IDEQ. The agencies insisted on a stack though the air emissions analysis indicated that the stack was not required. Subsequently a trade study was conducted to select the optimum height of the stack, which was agreed upon the agencies and added to the Stage II baseline.

- Material compatibility of retrieved waste in the Material Handling Cell was initially planned around a simple test: no smoke, therefore material must be compatible. After all, it is compatible in the present (buried) location. The approach was not accepted by the Agencies and drove the development of a much more complex system of tests based on mixing small amounts of the waste in accordance with an ASTM standard.

- VOC monitoring at the dig face resulted from an IDEQ comment on the Stage II Process Flows. VOC stack monitoring was not warranted based on the air analysis performed from the inventory.